IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 299 OF 2006

Samaj Seva Mandal etc. 3 ... PETITIONER

V/s.

The State of Maharashtra & Anr. ... RESPONDENT

Mr. V.N. Bandiwadekar for the petitioner.
Mr. P.G. Sawant,AGP for respondents.

CORAM : F.I. REBELLO,
ANOOP V. MOHTA, JJ.

DATED : 21st March, 2006

P.C.

. The petitioners have invoked Article 226 of the Constitution of India and prayed to quash an order dated 21.09.2005 issued by respondent No.2, the Education Inspector of Greater Bombay, by which the appointment of petitioner No. 3 as Shikshan Sevak in petitioner No. 2's school i.e. Pragati Vidyalaya Secondary School (Government recognized), Mumbai, which is under the control of petitioner No. 1 i.e. Samaj Seva Mandal, Mumbai has been disapproved. Therefore, this petition.

2. Petitioner No. 3 was appointed as Jr. Clerk in petitioner No. 2's school on the basis of his

S.S.C. qualification in open category on 05.05.1992. Petitioner No. 3 had acquired qualification of B.A. B.Ed. after obtaining permission from petitioner No.1. sometime in May, 1991. Petitioner No. 3 became eligible and qualified to be appointed as Assistant Teacher. As there was no vacancy, the representation of petitioner No. 3 was turned down between 26.06.1998 till 29.03.2005. As vacancy arose after the death of Assistant Teacher Shri Mukesh Patil and, as the wife of deceased Mukesh Patil gave no objection, petitioner No. 3 therefore once again requested on 25.04.2005 to be considered for promotion. The respondent-Management decided to promote petitioner No. 3 as an Assistant Teacher and brought the same to the Notice of respondent No. 2 on 02.05.2005. The school committee in its meeting held on 06.06.2005 resolved to promote petitioner No. 3 on 06.06.2005. The letter of appointment as a Shikshan Sevak, on honorarium of Rs. 4000/- for three years from 13.06.2005 to 30.04.2008 has been issued on 10.06.2005. Petitioner No. 3 joined the post in respondent No. 2’s school and submitted his joining report on 13.06.2005. Petitioner No. 2 thereafter forwarded proposal of petitioner No. 3 for the approval. Respondent No. 2, however, by the impugned order dared 21.01.2005 refused the approval to the

appointment of petitioner as Shikshan Sevak on the ground that -

(i) Information regarding ro aster was not submitted.

(ii) The appointment was made without the petitioner No. 3 resigning from the post of clerk.

Petitioners have therefore prayed for approval and all related benefits.

3. As per the Government of Maharashtra (School Education & Sports Department) Resolution dated 10th June, 2005 and specially in view of clause 8, which provides that if non teaching employee acquires necessary educational qualification for the post of Teacher in the Secondary School or Junior College and if the post in that cadre is available in the Secondary School or Higher Secondary School/Junior College, the said non teaching employee would be appointed as Shikshan Sevak with entitlment of the honorarium of Shikshan Sevak. All other terms and conditions of the services would be extended to him. It has also been provided that past services of such non teaching employee would be admissible for the

retirement pension.

4. On the basis of the same, as vacancy occured in open category, the Respondent-Management has considered the case of petitioner No. 3 and appointed him as a Shikshan Sevak in petitioner No. 2's school w.e.f. 13.06.2005. The Management by its resolution dated 06.06.2005 had resolved to appoint petitioner No. 3 as he had acquired the qualification of B.A. B.Ed. which is required for the post of teacher from Cadre of Jr. Clerk. Petitioner No. 3 had in-fact on 26.06.1998 made an application for transfer of cadre by promotion, but as the post was not vacant, his application was kept pending. As an Assistant Teacher, Mukesh Patil expired on 29.03.2005 and as there was no objection for appointment, petitioner No.3's representation has been considered. By the said Resolution petitioner No.3's appointment has been approved by way of changing cadre as Shikshan Sevak from 13.06.2005 to 30.04.2008 and monthly honorarium of Rs. 4000/- has been fixed. Later on an appointment order has been issued on 10.06.2005 in favour of petitioner No.3. Petitioner No. 3 joined the services w.e.f. 13.06.2005. The respondent-Management thereafter made a representation under the provisions of M.E.P.S. Rules, 1981 for

approval in question. However, respondent No. 2 by the impugned order dated 21.09.2005, wrongly refused to grant the approval to the appointment on the above grounds. We are of the view that the actions of the petitioners have been within the frame of the circular itself.

5. There is nothing pointed out that a person belonging to the clerical cadre i.e. non teaching employee cannot be considered for appointment as an Assistant Teacher, unless such person resigns from the post of clerk. The post is in the same institution. On a person belonging to the clerical cadre being appointed as teacher and on his appointment to the post of teacher, he would cease to hold the post of clerk as a person promoted from a lower post to a higher post has not to resign from the lower post. In the present case, admittedly, petitioner No. 3, an open candidate, as vacancy had occurred and in view of the circular the respondent- Management considered his basic representation dated 26.06.1998 apart from other representations, whereby petitioner No. 3 had requested to transfer from clerical cadre to the post of Assistant Teacher by the promotion. Formality of resignation in such circumstances, no way affects the right of petitioner No. 3 who being qualified, was

entitled to be considered for appointment to the post of assistant teacher in question.

6. Therefore, merely because, there was no actual resignation, tendered by petitioner No. 3, that itself cannot be a ground to reject the appointment, which otherwise is legal and within the framework of law.

7. The Management also by its letter dated 10.06.2005 had nowhere informed and insisted for the resignation before joining the post of teacher. The only requirement which was insisted was to file undertaking of having accepted the terms and conditions of the service. In view of this, we see no reason to reject the approval to the appointment of petitioner No. 3 as a Shikshan Sevak.

8. Once an employee is considered for a higher post in the same institution, it is not necessary to tender resignation from the post the employee was holding. In the present petition, petitioner having accepted the appointment order and on his appointment to the post of teacher would automatically lose his lien on the lower post. We are of the view that the reason given to reject the approval in question is not

correct.

9. In view of this the order dated 21.09.2005 is quashed and set aside and respondent No. 2 is directed to grant approval to the appointment of petitioner No. 3 as a Shikshan Sevak in the school of petitioner No. 2 w.e.f. 13.06.2005 and further release the grant in aid to petitioner No. 2 for payment of honorarium to petitioner No. 3 @ Rs. 4000/- per month and further grant all other benefits in view of appointment order dated 13.06.2005 issued by petitioner No.2.

10. The respondents are further directed to issue the appropriate orders and grant in aid within six weeks from the receipt of this order.

11. The petition, therefore, is allowed in terms of prayer clause (a) & (b) with no order as to costs.

12. Parties to act on the ordinary copy of the order duly authenticated by Associates.

[F.I. REBELLO,J.]

[ANOOP V. MOHTA, J.]